

Commerce & Economic Development Committee

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COMMERCE & ECONOMIC DEVELOPMENT COMMITTEE

LEGISLATION ENACTED

professional license extensions; military members (S.B. 1006) – Chapter 183

SEE GOVERNMENT COMMITTEE.

counterfeit marks; intellectual property (S.B. 1038) – Chapter 121

Decreases the thresholds by which the penalties for violations of unlawful copying or sale of sounds or images from recording devices involving articles that contain sound recordings are determined. Requires the court to order a defendant who is convicted of unlawful copying or sale of sounds or images from recording devices to make restitution to a party that has suffered injury resulting from the violation.

court reporter certification (S.B. 1050) – Chapter 54

Grants authority to the Arizona Supreme Court to determine, by rule, the duration of court reporter certification, rather than a statutory annual duration, and eliminates the termination date of the Certified Court Reporter Program.

occupational safety; employee death; penalties (S.B. 1125) – Chapter 187

Requires, in the event of the death of an employee who does not have any dependents, the employee's estate to receive the additional \$25,000 penalty that is assessed against an employer for willful or repeated violations of any occupational safety and health regulation resulting in the employee's death or permanent disability.

AHCCCS; DES; new hires directory (S.B. 1133) – Chapter 79

Allows the Department of Economic Security and the Arizona Health Care Cost Containment System Administration to use the state directory of new hires to verify members' eligibility for Medicaid programs.

~~security guards; technical correction~~ (NOW: purchaser dwelling actions; definition) (S.B. 1176) – Chapter 229

Modifies the definition of "seller," for purposes relating to purchaser dwelling actions, to exclude a real estate broker or salesperson who provides services in connection with the resale of a dwelling following its initial sale.

certified public accountants; reciprocity privilege (S.B. 1227) – Chapter 295

Makes various changes to the statutes regulating accountants; the following are some of the notable provisions:

APPROPRIATIONS COMMITTEE (Cont'd.)

Limited Reciprocity Privilege – Permits a non-Arizona resident who has a principal place of business outside of Arizona to practice as a certified public accountant (CPA) in Arizona under the limited reciprocity privilege for an unlimited amount of time, without approval by the Arizona State Board of Accountancy (Board), if the individual meets certain requirements. Additionally an out-of-state firm may practice accounting in Arizona without registering if the firm is owned by or employs a limited reciprocity privilege holder and meets other specified requirements.

Registration and Certification – Permits the Board to require registrants to report the imposition of any discipline on the registrant's right to practice. Prohibits a CPA or public accountant (PA) from requesting cancellation of a certificate if a complaint has been filed against the CPA or PA. The measure also permits a firm to cancel its registration by filing a written request, subject to limitations, and stipulates that a firm's registration expires if it was suspended due to failure to register properly and is not reinstated within 12 months.

Board Membership – Replaces one of the current public members on the Board whose term ends on July 3, 2009, after the end of the current term, with a public member who will serve a three-year term, which will stagger the terms of the public members.

charitable funds; management (S.B. 1228) – Chapter 30

Repeals the statutes relating to investment for eleemosynary purposes and replaces them with modified statutes regarding the management of charitable funds. Specifies new factors an institution must consider when managing and investing an institutional fund and when determining to appropriate or accumulate an endowment fund. The measure modifies an institution's ability to delegate authority pertaining to a fund and establishes the responsibilities of both the institution and the agent to whom authority is delegated. It also modifies an institution's ability to apply to the court for the modification or release of impracticable or wasteful restrictions on the use of a fund, and allows institutions that manage and invest small and old funds to modify or release such restrictions after notifying the Arizona Attorney General, without application to the court.

real estate department; designation removal (S.B. 1232) – Chapter 231

Eliminates an applicant's or licensee's ability to obtain a license specializing in the sale of businesses from the Arizona Department of Real Estate (ADRE). Prohibits, retroactive to January 1, 2008, ADRE from releasing a licensee's or applicant's residential address, telephone number or electronic mail address, except as otherwise specified, rather than permitting a licensee to request this information to be kept confidential.

timeshares; trustee's sales; foreclosures (S.B. 1258) – Chapter 260

Allows the use of trustee's sales of timeshare interests to enforce assessments that are delinquent for one year. An association or managing entity (association) that desires to cause a trustee's sale must: 1) prepare, execute and acknowledge a notice of delinquency; 2) record the notice; 3) mail a copy of the notice to the owners by certified mail and include, if the owner acquired fee title before January 1, 2009, a statement informing the owner of the right to prevent a trustee's sale; and 4) post a summary of the notice on an owner notice board at the property. Prescribes the posting requirements for the notice of sale and the manner in which a trustee's sale must be executed.

APPROPRIATIONS COMMITTEE (Cont'd.)

Allows an owner of a timeshare estate who acquired fee title before January 1, 2009, to prevent a trustee's sale for delinquent assessments by signing and returning by certified mail, within 30 days, the notice of election to prevent the trustee's sale.

corporations and LLCs (S.B. 1410) – Chapter 314

Modifies requirements pertaining to the filing of documents, including: 1) requiring the Arizona Corporation Commission (ACC) to file a document if the document satisfies the statutory requirements and the corporation or limited liability company (LLC) is in good standing, rather than only if the document satisfies the statutory requirements; 2) permitting, rather than requiring, the ACC to file a corporation's articles of dissolution or a document that is required to bring a corporation or LLC into good standing; and 3) removing, in various statutes, the requirement that a corporation, nonprofit corporation (nonprofit) or LLC file an affidavit evidencing the publication of a filed document. Removes the requirement that a Certificate of Disclosure include the Social Security number of any person subject to disclosure and a brief statement disclosing whether certain individuals served in a similar capacity on the charter revocation of any other corporation. The measure also removes the requirement that a nonprofit include a statement of its financial condition in its annual report.

Permits a parent LLC and its subsidiary to be formed at the same time. Makes changes relating to the termination of an LLC, including reducing the amount of information that must be included in an LLC's articles of termination and specifying that the managers in office at the time an LLC terminates, or the members, may take any action that is necessary to wind up and liquidate the LLC's affairs. Additionally, the measure requires the ACC, if an LLC has been administratively dissolved and does not apply for reinstatement within six months after dissolution, to release the company name for use. If an LLC applies for reinstatement and its name has already been adopted, the LLC must include with the application articles of amendment that adopt a new name.

The measure also exempts specified entities from the requirement that a person who transacts business in Arizona under a fictitious name or designation that does not show the name of the business owner or the name of the corporation record a certificate stating the name and address, and expands the persons or entities that may serve as the agent for service of process on a limited partnership to include an LLC that is authorized to do business in Arizona.

contractor regulation (S.B. 1417) – Chapter 261

Requires the Registrar of Contractors (Registrar) to order a summary suspension of a general remodeling and repair contractor's license if the contractor fails to secure workers' compensation insurance or if the public health and safety requires immediate action. Prohibits a general remodeling and repair contractor from accepting new projects if the contractor is the subject of five unresolved and substantiated abandonment complaints within 12 months, until the number of complaints falls below five in a year.

Limits those who can automatically cause the Registrar to investigate a contractor's actions by filing a written complaint, from any person, to an owner or contractor that is party to a construction contract or a person who suffers a material loss or injury as a result of a contractor's failure to perform work in a professional and workmanlike manner or in accordance with applicable codes and standards. Prevents the Registrar from issuing a citation for failure to perform work to a contractor under specified circumstances and removes the Registrar's ability to issue a citation for

APPROPRIATIONS COMMITTEE (Cont'd.)

the commission of an act that is cause for suspension or revocation of a license to a contractor on the written request of the complainant.

regional attraction districts (S.B. 1450) – Chapter 297

Permits a city with more than 10,000 but less than 20,000 persons in a county with more than 300,000 but less than 400,000 persons to establish a Regional Attraction District (District) on petition of the owners of at least 200 acres of real property in the proposed District and after a public hearing. If formed, the District must provide for the construction, financing, use, furnishing, improvement, operation, marketing, promotion and maintenance of a regional attraction venue that has a themed design; it may not operate the venue or any improvement or facility located in the District as a business, other than as a lessor. District property is exempt from ad valorem property taxes; however, the District's Board of Directors (Board) must make payments in lieu of property taxes for any District property located outside of the venue.

Permits the District, if it receives at least \$100 million of legally enforceable financial participation commitments from private nongovernmental entities, to authorize by resolution and issue up to \$750 million in negotiable revenue bonds to provide for venue purposes. The bonds must be fully insured or guaranteed. The District must pledge at least part of its revenues to secure the bonds or other financial obligations.

Permits the District to levy an excise tax of no more than ten percent on business activity within the District above any state or local transaction privilege and use taxes. The State Treasurer must remit the net revenues collected to the District each month for deposit in the District's general fund. The tax expires when all bonds, interest and other related charges have been paid.

The measure establishes a five-member Board to oversee the District; the Board is subject to the statutes pertaining to public meetings, public records and conflicts of interest, and must comply with certain reporting and independent audit requirements. It also requires the Office of the Auditor General to conduct a performance audit of the District 35 years after the initial issue of bonds and terminates the District and repeals the statutes either five years after the delivery of the performance audit or if the Board fails to issue bonds on or before December 1, 2015.

notary public; name change. (S.B. 1486) – Chapter 91

Permits a notary public whose surname changes for any reason, rather than only due to marriage, to continue using the official seal and commission in the notary public's prior name until that commission expires, rather than applying for a new notary commission under the new name.

professions; occupations; initial regulation (S.B. 1502) – Chapter 132

Establishes a sunrise process for the initial regulation of nonhealth professions and occupations. Requires an applicant group seeking regulation to submit a written report that addresses the required factors for regulation to the Joint Legislative Audit Committee for review by a legislative committee of reference, which must make a recommendation. Any regulation of a profession or occupation must be for the exclusive purpose of protecting the public interest and is limited to specified circumstances.

APPROPRIATIONS COMMITTEE (Cont'd.)

home inspectors; rules; standards committee (H.B. 2077) – Chapter 48

Reduces the membership threshold, from 50 to 40, for a home inspector organization to qualify to submit names for membership on the Home Inspector Rules and Standards Committee.

~~park model trailer spaces~~ (NOW: landlord charges; utilities) (H.B. 2123) – Chapter 96

Establishes guidelines for the charging of utilities to recreational vehicle (RV) owners. Permits a landlord to charge separately for: 1) gas, water or electricity by either installing a submetering system or allocating the charges separately through a ratio utility billing system, except as otherwise specified; 2) removal of waste, garbage, rubbish, refuse and trash; and 3) sewer services. A landlord who has overcharged tenants must refund the amount to the tenants who were overcharged and who reside in the park at the time the overcharge is determined, and establishes a process by which a tenant may dispute a landlord's noncompliance with the guidelines. The measure also requires a landlord to provide a statement of proposed interruption of utility service to the tenants within a reasonable time, except in the case of an emergency, and prohibits the state from adopting rules that are more stringent than those authorized by the federal government for the purpose of regulating RV parks as public water systems.

unemployment insurance; liability; liens; service (H.B. 2206) – Chapter 36

Requires the Department of Economic Security (DES) to determine due, at any time, any contributions, interest or penalties for wages and periods that the Internal Revenue Service assesses, against which credit may be taken for required state contributions. Extinguishes an employer's obligation to pay any delinquent unemployment tax or related amount six years after the amounts were determined due, with exceptions. The measure also makes various changes relating to liens for unpaid contributions, including allowing DES to release a lien, subordinate a lien to other liens or withdraw a lien if certain requirements are met.

Allows DES to notify an employer electronically or by regular mail, rather than certified mail, of a determination relating to the state unemployment tax or the employer's contribution rate.

~~notification; complaint; registrar of contractors~~ (NOW: prime contracting TPT; deduction) (H.B. 2356) – Chapter 303

Retroactive to September 1, 2006, modifies the current deduction for development fees from state and municipal transaction privilege taxes (TPT) levied against prime contractors or subcontractors (contractors), providing a deduction for an amount equal to the development fees paid plus the amount credited to a contractor for the construction of, contribution to or dedication of real property for providing necessary public services, rather than the amount of development fees paid to the state or local government. The amount of the deduction may not exceed the value of the development fees actually imposed. Contains a retroactivity clause that states the act intends to clarify, not expand, the existing TPT deduction for contractors.

materialmen's liens; surety bonds (H.B. 2474) – Chapter 112

Establishes that a surety bond recorded to discharge a mechanic's lien also serves as the release bond for a stop notice or bonded stop notice made with respect to the same materials and labor. Requires a release bond for a stop notice or bonded stop notice to be an amount equal to 150

APPROPRIATIONS COMMITTEE (Cont'd.)

percent of the amount claimed in the notice, rather than 125 percent of the amount claimed in the notice plus any reasonable expenses. Increases the required amount of a bond that accompanies a bonded stop notice from 125 percent to 150 percent of the amount claimed. A judgment for the claimant on a bond is limited to the penal sum of the bond and a claimant is entitled to any amount excess of the penal sum of the bond.

ignition strength of cigarettes; regulation (H.B. 2483) – Chapter 159 RFE

Subject to the requirements for enactment (Proposition 108), which requires the affirmative vote of at least two-thirds of the members of each house of the Legislature, establishes, beginning August 1, 2009, a new standard for cigarette ignition propensity. Requires, with specified exceptions, cigarettes to be tested according to the American Society of Testing and Materials “Standard Test Method for Measuring Ignition Strength of Cigarettes” to determine a cigarette’s compliance with the performance standard. Manufacturers must: 1) certify to the State Fire Marshal (FM) that each cigarette complies with the performance standard; 2) recertify each cigarette every three years; and 3) mark certified cigarettes. The FM may require manufacturers to pay a \$250 fee for each certified brand family of cigarettes.

Requires the FM to implement the requirements according to the New York Fire Safety Standards for Cigarettes. Permits the Arizona Department of Revenue to inspect cigarettes for compliance and the Arizona Attorney General (AG) to examine the records of any person in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale, as well as any cigarettes on the premises. Establishes civil penalties for violations and subjects any cigarettes sold or offered for sale that do not comply with the performance standard to forfeiture and destruction. Permits the FM or the AG to file an action in the superior court for injunctive relief or to recover any costs or damages to the state due to a violation.

Preempts political subdivisions from adopting different standards. Requires the FM to: 1) review the effectiveness of the testing requirements and report to the Legislature every three years and 2) notify the Governor, the Speaker of the House of Representatives and the President of the Senate immediately after a federal standard that preempts the state standard takes effect. Repeals the state standard if a federal law that preempts the state standard takes effect.

insurance contracts; small employer coverage (H.B. 2658) – Chapter 118

Modifies the circumstances under which: 1) a health care insurer may nonrenew or discontinue an individual’s disability insurance coverage and 2) an accountable health plan may refuse to renew or terminate a health benefits plan. Classifies a group disability policy issued in any state as a health benefits plan subject to the statutes pertaining to accountable health plans. Specifies that coverage issued to voluntary small employer risk pools qualifies for the premium tax exemption that accountable health plans receive for issuing health benefits plans to small employers.

Sudan; investments; business operations; prohibition (H.B. 2705/S.B. 1366) – Chapter 1

Requires public funds, defined as the Arizona State Retirement System, the Public Safety Personnel Retirement System, the Elected Officials’ Retirement Plan, the Corrections Officer Retirement Plan and the State Treasurer, to divest securities of companies with scrutinized business operations in Sudan, with specified exceptions. Requires public funds to: 1) assemble a scrutinized companies list; 2) update and report the list annually; 3) divest fully in any company within 18

APPROPRIATIONS COMMITTEE (Cont'd.)

months after its appearance on the list; and 4) report annually on any actions taken. Prohibits public funds from acquiring securities of companies on the scrutinized companies list.

Deems, with respect to actions taken in good faith compliance with this act, that a public fund, its board of directors and individual board members, agents, attorneys, trustees, officers, employees, custodians, fiduciaries, research firms and investment managers under contract with the public fund are: 1) exempt from any conflicting statutory or common law obligations; 2) immune from any liability; and 3) indemnified from the state General Fund and held harmless by the state.

Requires contractors to certify in procurement contracts with Arizona or any of its political subdivisions that the contractor does not have scrutinized business operations, with exceptions. Allows, due to a false certification, the state or a political subdivision to terminate a contract and the state's Central Procurement Officer (CPO) to suspend a contractor from eligibility for procurement contracts with the state. Requires the CPO to create a list of parties excluded from procurement and to report within one year on any actions taken.

Repeals the requirements on July 13, 2013, or earlier. Includes legislative findings and declarations.

employer sanctions (H.B. 2745/S.B. 1374) – Chapter 152 E

SEE APPROPRIATIONS COMMITTEE.

liquor wholesalers; promotional items. (H.B. 2826) – Chapter 226

Allows a liquor wholesaler to furnish promotional items, without cost, to an on-sale retailer, limited to a total market value of \$500 per calendar year.

workers' compensation; claims (H.B. 2828) – Chapter 169

Prohibits the reopening of a workers' compensation claim that was previously denied if the notice of claim status or determination became final and there is no statutory allowance for a late hearing request. Requires claims for improper payment or denial of temporary partial disability benefits to be filed within two years after the claimed entitlement accrues or an award for benefits becomes final. Contains intent language.

LEGISLATION VETOED

~~municipal development fees; technical correction (NOW: municipal development fees; procedures) (S.B. 1406)~~ – VETOED

Makes various changes to the assessment of municipal development fees beginning January 1, 2009, and to the assessment of county development fees.

The Governor's veto message indicates that the measure places further restrictions on municipalities that seek to make developers assist in paying the public costs of growth through development fees. It also indicates that developers propose procedural changes to the way development fees are assessed every session and that rather than address these issues on a piecemeal basis, Arizona would benefit from an agreed upon, comprehensive approach to development fees.